IN THE HIGH COURT OF BOMBAY AT GOA.

APPEAL FROM ORDER NO. 26 OF 2004.

M/s. Scoop Constructions Pvt.
Ltd., D-S Dwarka Apartments,
Opp. Agricultural Office,
Tonca, Caranzalem, Panaji. ... Appellant.

Versus

1. Mr. Vledson Braganza,
   r/at H. No. 520,
   Vadi, Candolim.
2. Mr. Vishal Vinayak Bandekar,
3. Mrs. Vinita Vishal Bandekar,
   both r/at Bandekar Apartments,
   Altinho, Panaji. ... Respondents.

Mr. R.G. Ramani, Advocate for the Appellant.

Coram : S.A. BOBDE, J.

Date : 24th June 2004.

ORAL ORDER.

This appeal is preferred by the defendant no. 3 against an injunction granted to the plaintiff/respondent no. 1 restraining the respondents 2 and 3 and the present appellant from interfering with the plaintiff's possession over the suit property.

2. The parties are referred hereinafter as per their status in the suit. The plaintiff filed a suit for specific performance of the contract and in that he prayed for a temporary injunction. His case is that by an Agreement, dated 22nd December 2001, the defendants 1 and 2 agreed to sell the suit property which measures 39,988 square metres to him for a total consideration of about Rs. 25 lakhs. This amount was payable as

follows:- Rs. 5 lakhs at the time of execution of the agreement and Rs. 3 lakhs, which were liable to be adjusted from an amount of Rs. 3,50,000/- paid earlier by the plaintiff's mother, who is also said to have entered into an agreement with the defendants on 29th November 1997 for purchase of another property. The plaintiff claims to have made payment of a sum of Rs. 8 lakhs for purchase of the suit property at the time of entering into the agreement and had agreed to pay the balance of Rs. 17 lakhs in two equal instalments on or before 20th December 2002. In fact, one clause in the agreement prohibits the defendants from terminating the agreement until the entire amount is refunded by them. The plaintiff has averred that the defendants 1 and 2 have surreptitiously and in bad faith, even before the time stipulated for the plaintiff to effect the balance payment, sought to transfer the suit property to the defendant no. 3 under a garb of exchange transaction by a deed, dated 6th May 2002. The plaintiff apprehended that the defendants, may on the strength of the said fraudulent Deed of Exchange interfere with his peaceful possession in respect to the suit property and, therefore, sought an injunction. The Court, upon consideration of the facts and circumstances and having regard to the consideration of balance of convenience and irreparable loss, came to conclusion that the plaintiff is entitled to the injunction.

3. Mr. Ramani, the learned counsel for the appellant, strongly urged that the agreement on the basis on which the plaintiff had sued, that is, dated 22nd December 2001, could not have been looked into by the trial Court because the agreement is not a registered document. According to the learned counsel, it is, therefore, inadmissible in evidence. It is settled law that an agreement to sell does not create any interest or charge in the property but only gives rise to an obligation which limits the rights of the owner. Such an agreement is not liable to be registered under Section 17(1)(b) of the Act. This contention is not tenable and is liable to be rejected. On the other hand it was contended on behalf of the appellant that the Deed of Exchange is a registered document and the exchange being with the defendant no. 3, that is, the present appellant, who has entered into a bonafide transaction without notice of the earlier agreement, the injunction was liable to be refused. I am of the view that merely because the Deed of Exchange is said to be with a party who claims to have no notice of the earlier transaction with the plaintiff, would not disentitle the plaintiff to an injunction. The issue of injunction has to be decided on the basis whether the plaintiff has made a prima facie case for grant of injunction in his favour and whether the balance of convenience lies in granting it. Also whether it would occasion an

irreparable loss if the injunction is decided in his favour. The trial Court has come to a conclusion that there is an agreement to purchase the property entered into by the plaintiff, which is earlier in point of time to the Deed of Exchange said to have been executed by the defendants 1 and 2 in favour of the defendant no. 3 (the appellant). Having regard to this agreement and the prima facie finding of the plaintiff having been put in possession of the suit property, I am of the view that the trial Court has rightly granted injunction as prayed for by the plaintiff. The trial Court has observed that a larger part of the consideration has already been paid by the plaintiff to the defendants 1 and 2 and the plaintiff is ready and willing to perform his part of the contract. Having regard to this, the trial Court has come to the conclusion that the plaintiff will suffer irreparable loss. Having considered the matter, I am of the view that the trial Court has not committed any illegality, jurisdictional or otherwise, in the exercise of its discretion to grant an injunction.

4. In the circumstances, I am of the view that there is no merit in the Appeal, which is, hereby, dismissed.

(S.A. BOBDE)
JUDGE.

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